

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
WAYNE JOSEPH, SCOTT DENLEY, ANTHONY
BARBATO, BRYAN WALSH, LATORIA BOSLEY,
and DARRELL EASON, on behalf of all persons
similarly situated,

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 6/24/2021

Plaintiffs,

-against-

20 Civ. 5776 (AT)

METROPOLITAN TRANSPORTATION AUTHORITY
and TRIBOROUGH BRIDGE AND TUNNEL
AUTHORITY,

Defendants.

JEFFREY MERCADO, TYRONE PRINGLE, ADAM
ROMAN, KEVIN KNOIS, and EDWARD KALANZ, on
behalf of themselves and others similarly situated,

Plaintiffs,

-against-

20 Civ. 6533 (AT)

METROPOLITAN TRANSPORTATION AUTHORITY
and TRIBOROUGH BRIDGE AND TUNNEL
AUTHORITY,

ORDER

Defendants.

ANALISA TORRES, District Judge:

Before the Court are two related cases involving alleged violations of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 *et seq.* Defendants, Metropolitan Transportation Authority and Triborough Bridge and Tunnel Authority, move to consolidate the actions. ECF No. 55.¹ Although Plaintiffs in the first-filed action (the “*Joseph Action*”) do not oppose Defendants’ motion, No. 20 Civ. 5776, ECF No. 36, Plaintiffs in the later-filed action (the “*Mercado Action*”) do, ECF No. 71. For the reasons stated below, the motion is DENIED.

Cases may be consolidated where they involve “a common question of law or fact.” *Stone v. Agnico-Eagle Mines Ltd.*, 280 F.R.D. 142, 143 (S.D.N.Y. 2012) (quoting Fed. R. Civ. P. 42(a)). A court may consolidate cases “to avoid unnecessary costs or delay,” but “[c]onsiderations of convenience and economy must yield to a paramount concern for a fair and impartial trial.” *Id.* (quoting *Johnson v. Celotex Corp.*, 899 F.2d 1281, 1284-85 (2d Cir. 1990)). Thus, “consolidation should not be permitted if it would cause delay or undue prejudice.” *Scott v. Newsday, Inc.*, No. 88 Civ. 0152, 1989 WL 20598, at *4 (E.D.N.Y. Mar. 3, 1989).

¹ All docket entries refer to documents as numbered in *Mercado et al. v. Metro. Transp. Auth. et al.*, No. 20 Civ. 6533 (S.D.N.Y.), unless otherwise noted.

The two actions are similar because both groups of Plaintiffs allege FLSA violations against the same employer. ECF No. 1; No. 20 Civ. 5776, ECF No. 24. However, some of the *Joseph* Action Plaintiffs might be exempt under the FLSA because they are salaried, unlike the *Mercado* Plaintiffs. No. 20 Civ. 5776, ECF No. 24 ¶ 38; ECF No. 33-2 ¶¶ 29, 31; *see Castro v. Metro. Transp. Auth.*, No. 04 Civ. 1445, 2006 WL 1418585, at *3 (S.D.N.Y. May 23, 2006) (“[A]n executive, administrative, or professional employee . . . who performs certain duties and is paid on a salary basis at a rate of not less than \$455 per week” is exempt from the provisions of the FLSA). Additionally, unlike the *Joseph* Action Plaintiffs, the *Mercado* Action Plaintiffs allege that Defendants did not pay them for off-the-clock work and shaved their work time through their timekeeping system. ECF No. 1 ¶¶ 120–44. Because the *Joseph* Action Plaintiffs’ claims are more limited, and because more discovery would be needed in the *Joseph* Action to establish whether the FLSA applies, consolidation is not appropriate. *See Sands v. Manhattan Beer Distrib., Inc.*, No. 08 Civ. 0182, 2009 WL 10709098, at *2 (E.D.N.Y. Mar. 10, 2009) (“Given the broader scope of [one plaintiff’s] claim and the need for more discovery in that case, consolidation [with another case against the same defendant] would be improper and may result in unfair prejudice . . .”).

Accordingly, Defendants’ motion to consolidate is DENIED. By **July 15, 2021**, Defendants shall answer or otherwise respond to the complaints.

SO ORDERED.

Dated: June 24, 2021
New York, New York



ANALISA TORRES
United States District Judge